PUBLIC PROSECUTOR

v.

LIM BOON HOCK & ORS.

HIGH COURT MALAYA, JOHOR BAHRU
MOHD. YUSOFF MOHAMED J
[CRIMINAL TRIAL NO. 8/1981]
20 NOVEMBER 1984

CRIMINAL LAW AND PROCEDURE: *Section 39B(3) Dangerous Drugs Act - Consent to prosecute - Section 37(d) - Presumption of possession - Presumption of knowledge of nature of drugs - Substantial quantity - Death sentence - Dangerous Drugs Act 1952, ss. 37(d), 39B(1)(a), 39B(3).*

The three Accused were charged for trafficking in dangerous drugs contrary to s. 39B(1)(a) of the Dangerous Drugs Act 1952 ("the Act"). Before the charge was read to all three Accused, the Deputy Public Prosecutor wished to amend the charge to read trafficking in 38.8078 kg. of raw opium instead of 38.8079 kg., a difference of 0.0001 kg. A preliminary point relating to the consent to prosecute issued under s. 39B(3) of the Act was ruled. The amended charge was then read to all three Accused. Accused 1 pleaded guilty but Accused 2 and 3 claimed trial. The facts alleged against Accused 1 were explained to him in the presence of his counsel and he admitted all the facts were true.

Held:

[1] The Public Prosecutor's consent to prosecute required under the Act was valid as firstly, the Public Prosecutor himself conducted the prosecution and therefore the consent was implicit. Secondly, the consent given was for a larger amount than the amount referred to in the charge and the difference in weight was minimal to derogate the essence of the offence.

[2] The facts revealed that Accused 1 had custody of the drugs and under the presumption in s. 37(d) of the Act, he was deemed to have been in possession of such drugs. There was no proof to the contrary by Accused 1 and under the Act he was assumed to have known of the nature of such drugs. Therefore the charge was proven and the plea of guilty accepted.

[3] In view of the substantial quantity of dangerous drugs involved, Accused 1 had no mitigating factors in his favour and was sentenced to death as required by law.

[Accused 1 sentenced to death. Accused 2 and 3 acquitted.]

Cases referred to:
Public Prosecutor v. Oie Hee Koi & Associated Appeals [1968] 1 MLJ 154

Legislation referred to:
Dangerous Drugs Act 1952, ss. 37(d), 39(B)(1)(a), (3)
Penal Code, s. 34

For the accuseds - Elyas Majeed; M/s Elyas Majeed & Co.
For the prosecution - Balia Yusof b. Wahi

JUDGMENT

Mohd. Yusoff Mohamed J:

The Accused, Lim Boon Hock was charged with two others, Lim Ah lek and Ho Poh Gek for trafficking in dangerous drugs, to wit, 38.8078 kg. of raw opium on 19 August 1981 at about 11.30 a.m. at the Customs Checkpoint, Causeway, Johor Bahru contrary to s. 39B(1)(a) of the Dangerous Drugs Act 1952 (the Act).

Before the charge was read to all the three Accuseds the learned Deputy Public Prosecutor wished to amend the charge and requested the Court to make a decision on preliminary point relating to the consent to prosecute issued by the Public Prosecutor under s. 39B(3) of the Act. This consent to prosecute the Accuseds dated 23 September 1981 was for trafficking in dangerous drugs amounting to 38.8079 kg. of raw opium. Now the learned Public Prosecutor wished to amend the charge against all the three Accuseds for trafficking in 38.8078 kg. of raw opium which amount differed by 0.0001 kg. less. The question was whether the Public Prosecutor's consent originally produced was valid. The learned Deputy Public Prosecutor's contention was that the consent was valid because the difference in the amount of the drugs there was minimal and it did not prejudice the Accuseds. He distinguished this case with the Penang case (no reference given) where the word "B" in s. 39B was omitted in the charge and hence the consent was held invalid.

The learned counsel for the Accuseds did not seriously object to the amended charge but contended that a fresh Public Prosecutor's consent was required because of different amount of drugs shown in the charge as compared to that given in the consent.

I held that the consent was valid firstly, on the ground that in this case the Public Prosecutor himself conducted the prosecution and the consent as required under s. 39B(3) of the Act was implicit in his presence see *Public Prosecutor v. Oie Hee Koi & Associated Appeals* [1968] 1 MLJ 154 right-hand column. Secondly, the consent given by the Public Prosecutor was for a larger amount of dangerous drugs than the amount referred to in the charge and in any event the difference in the weight was minimal as to derogate the essence of the offence of trafficking in dangerous drugs to other offences in the Act. For this reason the difference in the amount did not in my opinion, prejudice the Accuseds.

Consequent to this ruling the amended charge was read and explained to all the three Accuseds. Accused 1, Lim Boon Hock, pleaded guilty to the charge but Accused 2 and 3 claimed to be tried. The nature and consequence of the plea by Accused 1 was explained to him particularly the provision of the law relating to this offence which carries capital punishment. His counsel was asked by the Court whether he was consulted by Accused 1 in making that plea. The counsel's reply was in the affirmative. The case was adjourned to the afternoon for Accused 1 to reflect upon his plea. When the Court resumed at 2.30 p.m. Accused 1 was again asked about his plea and he insisted that he wanted to maintain his plea of guilty.

The facts of the case were given by the learned Deputy Public Prosecutor as follows:

Acting on information received, a party of Customs Officers stationed themselves at the Customs Checkpoint at the Causeway at Johor Bahru on 19 August 1981, on the lookout for a car bearing Singapore registration No. EG 8382Z.

At about 11.30 a.m. on 19 August 1981, a Mercedes Benz bearing the same registration number was stopped by the party and was brought to the Customs Complex, Johor Bahru. The car was driven by Lim Boon Hock, the 1st Accused. There were also two other persons and a small girl in the said car.

Upon examination of the said car, the Customs party found 13 packages hidden under the rear seat of the car and another 12 packages were also found hidden behind the backrest of the rear seat of the car. These packages were found to contain raw opium. All the three persons in the car were detained and the packages together with the vehicle were also seized by the Customs.

The packages were then sent to the Chemistry Department for analysis and they were found to contain 38.8078 kg. of raw opium.

All the three persons were subsequently charged for trafficking in dangerous drugs under s. 39B of the Dangerous Drugs Act 1952 read with s. 34 of the Penal Code.

The facts were explained to Accused 1 in the presence of his Counsel and he admitted all the facts to be true.

From the facts it is revealed that Accused 1 had custody of the amount of drugs referred to in the charge and that under the presumption in s. 37(d) of the Act he was deemed to have been in possession of such drugs. There was no proof to the contrary from Accused 1 and under the Act he was assumed to have known the nature of such drugs. I was satisfied that the charge was proved and accepted the plea of guilty from Accused 1. I convicted him.

The Prosecution withdrew the charge against Accused 2 and 3 and I accordingly acquitted them.

In mitigation, the learned defence counsel pleaded for the alternative sentence of life imprisonment be imposed against Accused 1 which was optional before 1983 considering that this was his first offence and that he had shown remorse and was helpful to the Customs.

In view of the substantial quantity of dangerous drugs involved, I was of the opinion that the Accused had no mitigating factors in his favour. If transaction of such substantial quantity of prohibited drugs was successfully carried out, many innocent people would be affected. The consequence would be very damaging to the public and too well known both to members of the public and the Accused himself.

I sentenced Accused 1 to death as required by law and the sentence of death was duly pronounced. Accused 1 now appeals against this decision.

Also found at [1985] 1 CLJ 368